IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7405 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAYDABIBI W/O YUSUFBHAI MOHMADBHAI MALEK

Versus

COMMISSIONER OF POLICE

Appearance:

MS BANNA S DUTTA for Petitioner No. 1

MR DP JOSHI, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order passed by the Commissioner of Police, Ahmedabad City, Ahmedabad, on 07.08.2001, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) after being branded as a Bootlegger.

2. The detaining authority took into consideration

three offences registered against the petitioner-detenu under the Bombay Prohibition Act. The detaining authority observed that the activities of the detenu are detrimental to the public health and public order that the detenu is required to be immediately prevented from pursuing his illegal activities. The authority also observed that the detenu is in police custody but may apply for bail and on getting bail may pursue his illegal activities and, therefore, he is required to be prevented from pursuing his illegal activities. Therefore, the order dated 07.08.2001 came to be passed. The petitioner challenges the said order on various grounds stated in the petition under Article 226 of the Constitution of India.

3. Mr.Shukla, learned advocate appearing for the petitioner has restricted his arguments to the fact that the powers under Section 3(1) of the PASA Act were improperly exercised as the detenu was in police custody when the order was passed. He was not produced before this Court and nor he applied for bail. The observations of the authority that the detenu may apply for bail and on getting bail may pursue his illegal activities cannot be considered sufficient for passing an order in exercise of powers under Section 3(1) of the PASA Act. He, therefore, urged that the petition may be allowed.

4. Mr. D.P.Joshi, learned A.G.P. has opposed this petition.

5. There is no dispute that the petitioner was in police custody when the order was passed and the order was passed considering the likelihood of the detenu applying for bail and after getting bail pursuing his illegal activities. The Apex Court in the case of AMRITLAL VS. UNION GOVERNMENT THROUGH SECRETARY, MINISTRY OF FINANCE AND OTHERS, reported in AIR 2000 SC 3675 observed that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and detention order based on such material is liable to be quashed. The reasoning that there is likelihood to be released on bail is different from likelihood of his moving an application for bail.

The facts of the present case are identical and the decision of the Apex Court would be squarely

applicable to the facts of the present case. Hence, the order of detention cannot be permitted to be stand. The order, therefore, deserves to be quashed and set aside.

6. In the result, the petition is allowed. The impugned order of detention passed by the Commissioner of Police, Ahmedabad City, Ahmedabad on 07.08.2001 passed against the petitioner - detenu is hereby quashed and set aside. The detenu-Saydabibi wife of Yusufbhai Mohmadbhai Malek be released from detention forthwith, if not required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(A.L. Dave, J)

'Bhavesh'